

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, JOHN MEINERS, and DANIEL UMPA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NATIONAL ASSOCIATION OF REALTORS,
et al.,

Defendants.

Civil Action No. 4:23-cv-00788-SRB

[Consolidated with 4:23-cv-00945-SRB]

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION AND SUGGESTIONS IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS
WITH DEFENDANTS NEXTHOME, KEYES, JOHN L. SCOTT, AND LOKATION;
CERTIFICATION OF SETTLEMENT CLASSES; AND APPOINTMENT OF CLASS
REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL**

On April 30, 2024, the Court granted preliminary approval of Settlements in this case with five Defendants—Compass, Real Brokerage, RealtyOne, @properties, and Douglas Elliman. Doc. 163. Later, on July 15 and 16, 2024, the Court granted preliminary approval of Settlements with Redfin, Engel & Volkers, HomeSmart, and United Real Estate. Docs. 297 and 348. After several months of negotiations, Plaintiffs have now reached Settlements with four additional *Gibson* Defendant families:

- NextHome, Inc. (“NextHome”);
- The Keyes Company and Illustrated Properties, LLC (“Keyes”);
- John L. Scott Real Estate Affiliates, Inc., and John L. Scott, Inc. (“John L. Scott”); and

- The K Company Realty, LLC d/b/a LoKation (“LoKation”) (collectively the “Settling Defendants”).¹

The Settlements with NextHome, Keyes, John L. Scott, and LoKation are substantially similar to those reached with the nine previous *Gibson* Settling Defendants, as well as those reached with *Burnett* settling Defendants Anywhere, RE/MAX, Keller Williams, and HomeServices. The NextHome, Keyes, John L. Scott, and LoKation Settlements were the result of lengthy arms-length negotiations, mediations, and consideration of the risk and cost of litigation. *See* Berman Decl. ¶¶ 8, 13-14. As with the previous *Gibson* Settlements, these Settlements were reached after a detailed investigation of each Defendant’s financial condition and ability to pay a judgment or settlement. *See* Berman Decl. ¶ 15. The Settlements are fair, reasonable, and adequate, and beneficial to the Settlement Classes. *See id.* ¶¶ 13, 15. Class counsel have discussed the Settlements with the Gibson Class Representatives, and they have approved them. *See id.* ¶ 16.

Settlement Class:

1. The proposed Settlements with *NextHome* and *LoKation* encompass the same Settlement Class that the Court preliminarily certified for settlement of claims against Compass, Douglas Elliman, HomeSmart, Real Brokerage, Realty ONE, and United Real Estate, as follows:
 - a. All persons who sold a home that was listed on a multiple listing service² anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date range:
 - i. October 31, 2019 to date of Class Notice.

(*See*, NextHome and LoKation Settlement Agreements at ¶ 15)

¹ The Settlement Agreements are attached as Exhibits A-D to the Declaration of Steve Berman, Ex. 1 (“Berman Decl.”).

² MLS includes non-NAR multiple listing services, including REBNY / RLS, as well as multiple listing services owned, operated, or governed by, or associated with the Florida Association of Realtors (or its regional and local associations).

2. The proposed Settlements with *Keyes* and *John L. Scott* encompass the same Settlement Class that the Court preliminarily certified for settlement of claims against Engel & Völkers and @properties, as follows:

- a. All persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:
 - i. Homes in Arkansas, Kentucky, and Missouri: October 31, 2018 to date of Class Notice;
 - ii. Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming: October 31, 2017 to date of Class Notice;
 - iii. For all other homes: October 31, 2019 to date of Class Notice.

(*See*, Keyes and John L. Scott Settlement Agreements at ¶ 15).

Settlement Amount:

The Settlements provide that the Settling Defendants will pay a total of \$4.925 million for the benefit of the Settlement Class, as follows:

- NextHome: \$600,000
- Keyes: \$2.4 million
- John L. Scott: \$1 million
- LoKation: \$925,000

(*See* Settlement Agreements at ¶ 18) Together with other Settlements in this action and the *Burnett* action, Plaintiffs have recovered over \$1 billion for the benefit of the Settlement Class. (*See, e.g.*, Doc. 521 at 1) The non-monetary terms of these four Settlements are the same in all material respects as the terms of the previous nine *Gibson* Settlements, including the same Practice Changes (Settlement Agreements at ¶¶ 49-51), Cooperation (*id.* at ¶¶ 52-55), and Release provisions (*id.* at ¶¶ 28-30).

Because the Settlements constitute substantially similar relief as the Settlements the Court has already approved in *Burnett* (*Burnett* Doc. 1487), as well as the Settlements that the Court has preliminarily approved in this action (*Gibson* Docs. 163, 297, and 348), the Court should grant preliminary approval of the NextHome, Keyes, John L. Scott, and LoKation Settlements. In support, Plaintiffs incorporate herein their previous motions for preliminary approval (Docs. 161 and 294).

Plaintiffs anticipate reaching additional settlements with other Defendants in this case. To promote efficient use of settlement funds and class notice resources, and to avoid confusion to Class Members, Plaintiffs propose deferring the dissemination of Class Notice at this time to allow for the possibility of combining notice of the most recent four settlements with notice of additional settlements. *See* Berman Decl. ¶ 24. Plaintiffs further propose to file, at a later date, a separate motion for approval of the form and manner of Class notice that satisfies the requirements of due process and also takes into account the settlement notice that has already been provided in this case and in *Burnett*.

NextHome, Keyes, John L. Scott, and LoKation do not oppose this motion.

Wherefore, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlements with NextHome, Keyes, John L. Scott, and LoKation; (2) certifying the Settlement Class as defined above for settlement purposes only; (3) appointing *Gibson* Plaintiffs as Settlement Class Representatives;³ (4) appointing Settlement Class Counsel;⁴ (5) appointing

³ *Gibson* Plaintiffs, and proposed Class Representatives, are Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa.

⁴ Proposed Settlement Class Counsel are Ketchmark & McCreight P.C., Boulware Law LLC, Williams Dirks Dameron LLC, Hagens Berman Sobol Shapiro LLP, Cohen Milstein Sellers & Toll PLLC, and Susman Godfrey LLP. Doc. *See* Docs 163, 297, and 348 at ¶ 8.

JND as the notice administrator; and (6) directing Plaintiffs to file, at a later date, a motion seeking approval of the form and manner of class notice.

DATED: November 1, 2024

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